IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 220 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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INDUSTRIAL LINNINGS

Versus

CDOMMISSIONER OF INCOME-TAX

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Appearance:

1. INCOME TAX REFERENCE No. 220 of 1992
MR RK PATEL for Petitioner No. 1
MR MR BHATT for Respondent No. 1

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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 16/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the assessee, the following question of law has been referred to this Court under the provisions of Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

"Whether, on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the provisions of Section 40(b) of the Act were applicable in relation to (a) salary payment of Rs.42,000/- given to Shri N.R. Shah (b) in relation to consulting charges of Rs.12,000/- paid to Shri V.R. Shah, even though both of them were partners in the assessee-firm in their capacity as karta of their respective H.U.F."

2. We have heard learned advocate Shri R.K.Patel for the applicant-assessee and learned advocate Shri M.R. Bhatt for the respondent-revenue.

3. Learned advocates have very fairly submitted that the question of law which has been referred to this Court in this Reference has already been decided by this Court in Income Tax Reference No. 66/1992.

4. It has been further submitted that in Income Tax Reference No. 66/1992, the same question had arisen in respect of assessment year 1983-84 whereas, in the present controversy, we are concerned with assessment year 1981-82. Looking to the law laid down by this Court in Income Tax Reference No.66/1992 decided on 20th November, 2002 in the case of the assessee itself, we decide the question in the affirmative i.e. in favour of the revenue and against the assessee. It is pertinent to note here that while deciding the Income Tax Reference No.66/1992 this Court had relied upon a judgement delivered by this Court in the case of NATIONAL WIRE MANUFACTURING CO. Vs. COMMISSIONER OF INCOME-TAX reported in 223 I.T.R. 496.

5. In the circumstances, the Reference stands disposed of with no order as to costs.

(A.R. DAVE,J.)

(A.M. KAPADIA,J.)

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